

Federal Communications Commission

DA 06-266

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.

(Prospect, Kentucky, and Salem, Indiana))

MB Docket No. 05-120
RM-11194

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 2, 2006

Released: February 6, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division of the Media Bureau has before it for consideration the *Notice of Proposed Rulemaking*¹ proposing changes in the FM Table of Allotments, 47 C.F.R. § 73.202(b). In response to a petition filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of Station WZKF(FM), Channel 255B, Salem, Indiana, the *Notice* proposes to change the community of license for Station WZKF(FM) from Salem, Indiana, to Prospect, Kentucky. Clear Channel's request was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment. Clear Channel represents that if its request is granted, it will file an application to modify the facilities of Station WZKF(FM) to specify operation on Channel 255B at Prospect, Kentucky. Clear Channel filed comments supporting the changes proposed in the *Notice*.

2. In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.² Retention of Channel 255B at Salem would satisfy only the fourth allotment priority, "other public interest matters," whereas the proposed reallocation of Channel 255B at Prospect would satisfy the third allotment priority, "first local service."³

3. Salem, Indiana, is not located within an urbanized area, but Prospect, Kentucky, is located within the Louisville Urbanized Area. For that reason, a *Tuck* analysis is required to determine whether the proposed reallocation of Channel 255B at Prospect is entitled to consideration as a first local service.⁴ This

¹ *Prospect, Kentucky, and Salem, Indiana*, 20 FCC Rcd 6043 (MB 2005) ("Notice").

² 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

³ Salem will continue to be served by Station WSLM(AM) and WSLM-FM.

⁴ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("Tuck").

analysis evaluates the extent, if any, of the proposed allotment community's dependence upon the central city of the urbanized area.

4. The Commission considers the following factors in determining a community's interdependence with a central city: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community's leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own zip code or telephone book provided by the local telephone company; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.⁵

5. As to factor one, the extent to which community residents work in the larger metropolitan area rather than in the specified community, Clear Channel represents that 310 of the 2,292 employed persons in Prospect work at their place of residence. Clear Channel states that this percentage (13.5) compares favorably with other communities found to be independent. While the cited statistic is not inconsistent with a finding that Prospect is an independent community, neither does it preclude a contrary finding, *i.e.*, that the majority of the residents of Prospect are dependent upon Louisville for employment.⁶ We need not, however, determine whether this factor supports a finding that Prospect is independent of Louisville, because all of the seven other factors support a finding of independence.⁷ Because a majority of the *Tuck* factors favor a finding of independence, we conclude that Prospect is sufficiently independent of Louisville to warrant being credited with a first local service for purposes of implementing the FM allotment priorities.⁸

6. Prospect, an incorporated city of 4,657 persons, is an independent community for FM allotment purposes and is deserving of its own local service. For all of the foregoing reasons, we conclude that the public interest would be served by reallocating Channel 255B at Prospect, Kentucky. Channel 255B can be allotted at Prospect in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 21.4 kilometers (13.0 miles) northwest of Prospect at reference coordinates of: 38-25-59 NL and 85-50-01 WL.

⁵ *Tuck*, 3 FCC Rcd at 5378.

⁶ See also *Lake City, Chattanooga, Harrogate, and Halls Crossroads, Tennessee*, MB Docket No. 03-120, DA 05-3059 (MB 2005) (released November 25, 2005).

⁷ See Notice, 20 FCC Rcd at 6044, ¶ 4. See also *Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13,876, 13,880 (MM 2001), ¶ 9(a) ("*Albemarle*").

⁸ *Albemarle*, *supra*.

7. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. §801(a)(a)(A).

8. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), 0.283, and 1.420(i), IT IS ORDERED, That effective March 23, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel Number</u>
Salem, Indiana	250A
Prospect, Kentucky	255B

9. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Clear Channel Broadcast Licenses, Inc., for Station WZKF(FM), Channel 255B, Salem, Indiana, IS MODIFIED to specify operation on Channel 255B at Prospect, Kentucky, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

10. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (2)(k), Clear Channel Broadcast Licenses, Inc., licensee of Station WZKF(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes specified above.

11. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Order to the following:

Mark N. Lipp, Esq.
Scott Woodworth, Esq.
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004-1008

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Assistant Chief
Audio Division
Media Bureau**